DOCUMENT RESUME

ED 199 908 EA 013 415

TITLE	Students' Rights and Responsibilities Handbook. 1980 Revision.
INSTITUTION	California State Dept. of Education, Sacramento.
PUB DATE	80
NOTE	32p.; For a related document, see ED 150 738.
AVAILABLE FROM	Publications Sales, California State Dept. of Education, P.O. Box 271, Sacramento, CA 95802 ($1.50; add sales tax for California residents).
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	Confidentiality; Educational Opportunities; Elementary Secondary Education; Freedom of Speech; Law Enforcement; Policy; School Attendance Legislation; *School Law; *School Policy; Special Programs; Student Attitudes; *Student Behavior; *Student Problems; Student Records; *Student Responsibility; *Student Rights; *Student School Relationship

ABSTRACT

Students, parents, and school authorities are provided information about various laws and regulations pertaining to public school students in this handbook. Fundamental rights and responsibilities of students, including those described in right to education laws and judicial decisions, are discussed. Discipline policies, continuation schools, corporal punishment, dress codes, and smoking areas are covered in the section on student behavior. Proficiency standards, independent study, and school attendance of married or pregnant students are discussed in the section on educational opportunity. Issues of free speech are covered, including religious expression, student organizations, and student newspapers. The relationship between law enforcement agencies and student rights is treated in this handbook. Information useful to administration and school personnel is included in the section covering fees, deposits, and charges, along with sex discrimination issues. The handbook concludes with a section on information disclosure. (JEH)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED199908

Students' Rights and Responsibilities Handbook

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

EA 013 115

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

T. Smith

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

CALIFORNIA STATE DEPARTMENT OF EDUCATION • Wilson Riles, Superintendent of Public Instruction • Sacramento, 1980

Students' Rights and Responsibilities Handbook

1980 Revision

3

$1.50

This publication, which was edited and prepared for photo-offset production by the Bureau of Publications, California State Department of Education, was published by the Department, 721 Capitol Mall, Sacramento, CA 95814.

Printed by the Office of State Printing and distributed under the provisions of the Library Distribution Act

1980

Copies of this publication are available for $1.50 each, plus sales tax for California residents, from Publications Sales, California State Department of Education, P.O. Box 271, Sacramento, CA 95802.

A list of other publications that are available from the Department may be obtained by writing to the address given above.

Foreword

In recent years court decisions and legislation have brought about a significant increase in the rights granted to students and their parents or guardians with regard to the schools. Students, for example, now have expanded rights in disciplinary proceedings; and parents can, under prescribed conditions, examine the cumulative records of their child.

Many students and parents have indicated in correspondence to the Department of Education that they are generally unaware of the rights and responsibilities that they do have in our public schools. In 1978 our Department, with the help of several high school students, compiled the *Students' Rights and Responsibilities Handbook* to provide to students and parents a narrative summary of those rights and responsibilities. The positive response and great demand for the 1978 edition prompted us to bring the handbook up to date and, thus, make available to you this 1980 edition.

I am pleased that the Department of Education worked with the State Board of Education to make this handbook available; I am equally pleased that it is available in both English and Spanish. I am confident that its content will prove most valuable and informative for students and parents, as well as for educators, all of whom must work together to ensure the necessary balance between order and freedom in our educational institutions.

Superintendent of Public Instruction

Preface

This publication, *Students' Rights and Responsibilities Handbook*, is designed to provide to students, parents and guardians, and school authorities information about various laws and regulations pertaining to public school students and their parents or guardians. The handbook covers a variety of topics, all of which have become areas of concern for persons involved with the system of public education.

In this publication recognition is given to the fact that all students have individual civil liberties and are entitled to certain rights, as provided by the United States Constitution and the California Constitution. However, the content is in no way intended as an advocation of "student rights" versus "teacher rights" or "administrator rights."

The reader should keep in mind that the majority of the laws described herein are laws of the state of California and that all school districts must be operated in such a way as to be in compliance with them. As provided for by the law, districts may, and have, adopted additional rules and regulations that must be obeyed by all those within their jurisdictions. A knowledge of both state laws and district rules and regulations is therefore essential for students, parents or guardians, and school personnel.

The reader must also remember that the law is constantly undergoing change. The information contained in this handbook was current at the time of the book's approval by the State Board of Education. However, since approval, legislative enactments or judicial decisions may have been such that some statements are no longer accurate.

This handbook is primarily the result of the efforts of high school students. For their work in its compilation, special thanks are extended to Joanne Morris and Sharon Kalemkiarian, former student representatives to the State Board of Education, and to Linda Brunner, Mike Kashiwagi, and Linda Lohrey, former interns in the Department of Education's Executive High School Internship Program.

THOMAS M. GRIFFIN
Chief Counsel

Contents

	Page
Foreword	iii
Preface	iv
I. Fundamental Rights and Responsibilities	1
The Constitutional Rights of Students	1
The Right to an Education	1
The Right to Attend School	2
Student Responsibilities	2
Compulsory Education	2
II. Student Behavior	5
Discipline	5
Transfer to Continuation School	7
Corporal Punishment	7
Dress Codes, Grooming, and Appearance	8
Smoking Areas	8
III. Educational Opportunity	9
Proficiency Standards	9
Independent Study	10
Physical Education Options	10
Special Programs	10
School Attendance of Married Students	11
School Attendance of Pregnant Students	11
Exclusion from School	12
IV. Free Speech	13
Student Expression	13
Refusal to Salute the Flag	13
Religion	14
Student Involvement	14
Student Organizations	15
Student Independent Newspapers	15
Student Representative on Governing Board	16
V. Law Enforcement Agencies and the Schools	17
Law Enforcement Officers in the Schools	17
Searches and Seizures	18
Emancipated Minors	18
VI. Prohibitions Against School Districts and Personnel	19
Fees, Deposits, and Charges	19
Sex Discrimination	22
VII. Information Disclosure by Schools	23
Parental Information	23
Student Record File	23

I
Fundamental Rights and Responsibilities

The information presented in Section I concerns the constitutional rights of students, the right of students to an education, the right of students to attend school, the basic responsibilities of students, and compulsory education.

The Constitutional Rights of Students

Students, whether they are on or off campus, possess certain fundamental constitutional rights as citizens of not only California but also of the United States. In the case of *Tinker* v. *Des Moines Community School District* (393 U.S. 503 [1969]), the decision of the U.S. Supreme Court included the following:

> In our system, state operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves (students) must respect their obligations to the State. In our system, students may not be regarded as closed circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.

Students do not leave their rights outside the school. On the contrary, students have certain rights under the Constitution that must be protected while they are in school. The right to "due process of law" and the right to "equal protection of the law," for example, are both provided for by the Fourteenth Amendment (*Goss* v. *Lopez*, 95 U.S. 729 [1975]).

The Right to an Education

The California Supreme Court has held that education is a fundamental right of all students in California since education is essential to future economic, social, and personal growth (*Serrano* v. *Priest*, 18 Cal. 3d 728 [1976]).

Neither the Education Code nor the California Administrative Code, Title 5, Education, contains any provisions with respect to the action that a student and/or his or her parent or guardian may

take when one or both believe that the student is not receiving the education to which he or she is entitled. However, the ruling in the case of *Doe* v. *San Francisco Unified School District* (60 Cal. App. 3d 814) has made clear that the student and/or his or her parent or guardian may *not* sue for money damages in such instances.

Whenever a student or his or her parent or guardian believes that the student is not being afforded the education to which he or she is entitled, the student or his or her parent or guardian should first consult with the teacher or a counselor about the problem. If no change results, the student and his or her parent or guardian should next discuss the matter with the vice-principal or principal of the school. If the school administrators are unable or unwilling to provide assistance, the student or his or her parent or guardian should bring the matter to the attention of the district superintendent or even the school district governing board.

The Code of Ethics of the Teaching Profession (Section 80130 of the California Administrative Code, Title 5, Education) provides that "the educator believes in the worth and dignity of human beings" and that in fulfilling the goal of assisting students toward the realization of their potential as worthy and effective citizens, the educator will honor their integrity and will influence them through constructive criticism rather than by ridicule and harassment. Thus, steps similar to those described in the preceding paragraph should be taken when a student believes that he or she has not been treated with courtesy and respect.

The Right to Attend School

Education is both an economic and social necessity for the individual. It is also a necessity for the well-being of society. Many people believe that ignorance and the lack of mental and moral training in the early years lead to immorality and crime in later years.

The courts have ruled that "attendance at a public school is a legal right protected and entitled to the guarantees by which other legal rights are protected and secured" (*Ward* v. *Flood*, 48 Cal. 36; *Wysinger* v. *Crookshank*, 82 Cal. 588; *Miller* v. *Dailey*, 136 Cal. 212). Consequently, the parent or guardian of a child and the state in which the child resides are duty-bound to provide to him or her at least a reasonable opportunity for the improvement of his or her mind and the elevation of his or her moral condition.

The California Supreme Court has held that education is a "fundamental interest"; that is, that the right to receive an education is protected by the California Constitution (*Serrano* v. *Priest*, 18 Cal. 3d 728 [1976]).

Student Responsibilities

As a result of recent court decisions and recent legislation, public school students now enjoy more rights and privileges than ever before. Along with these new rights and privileges, however, they also have increased responsibilities. Students must realize that they will be held accountable for certain acts that involve or affect both school personnel and their fellow students.

In California all students have the responsibility to "comply with the regulations, pursue the required course of study, and submit to the authority of the teachers of the schools" (Education Code Section 48921 [10609]).[1] In addition students, like all persons, have the responsibility to respect the rights of all other individuals.

In short, students must demonstrate responsibility in the exercising of their rights.

Compulsory Education

A state has the power to make and enforce provisions for the compulsory education of children within the state (*Ex parte Liddell*, 93 Cal. 633). More specifically, the State of California may require that (1) parents place their children in a public school or a private school that meets certain prescribed conditions; or (2) children receive from a private tutor or other person who possesses the required qualifications instruction in the subject matter prescribed by the Education Code (*People* v. *Turner*, 121 Cal. App. 2d Supp. 861). By instituting compulsory education for specific categories of minors, the California Legislature has exercised the state's power in this regard.

Although the Legislature has the right to prescribe compulsory education for specified categories of minors, it does not have the power to compel such minors to receive instruction from

[1] In 1976 the Education Code was reorganized. In this publication first references are the section numbers as they appear in the reorganized code (AB 3100, Chapter 1010, Statutes of 1976, as amended), which became effective on April 30, 1977. Section numbers given in brackets are the numbers from the 1973 code as amended. The absence of a citation from the 1973 code indicates that the material is new in the reorganized code.

public school teachers only. Such authority would take away the right of parents to direct the upbringing and education of children under their control (*Roman Cath. etc. Corp.* v. *City of Piedmont*, 45 Cal. 2d 325), which would be unconstitutional (*People* v. *Turner*). However, the compulsory education system of California, since it provides for exemption of children attending private schools or receiving private instruction (Education Code sections 48222 [12154] and 48224 [12155]), is not subject to objection on this ground (*People* v. *Turner*). Furthermore, the right of parents to send their children to private rather than public schools is subject to a reasonable exercise of the state's police power (*Roman Cath. etc. Corp.* v. *City of Piedmont*).

A pupil may be excused from school for justifiable personal reasons when requested in writing by the parent and approved by the appropriate school official, and the student has the right to complete all assignments and tests missed during the absence. Such absences would include observance of a holiday, court appearance, religious ceremony, and employment conference (Education Code Section 48205).

Compulsory Education for Minors Ages Six to Sixteen

As provided by Education Code Section 48200 [12101], each parent, guardian, or other person having control or charge of a minor who is between the ages of six and sixteen years and who is not exempted by statute must send the child to a public full-time day school for the entire time during which the public schools of the city, city and county, or school district in which the minor lives are in session.

Any exemption of a minor from attendance at a public full-time day school must be obtained from the proper school authorities (Education Code Section 48220 [12151]). School authorities must grant exemptions to children who can be classified as follows:

1. Children whose physical or mental condition is such that it prevents or renders inadvisable attendance at school or application to study (Education Code Section 48221 [12152])
2. Children who are being instructed in a private full-time day school that meets certain requirements (Education Code Section 48222 [12154])
3. Children who are mentally gifted and who are being taught in a private full-time day school (Education Code Section 48223 [12154.5])
4. Children who, for at least three hours a day and 175 days of each calendar year, are being instructed in English and the other branches of study required to be taught in the public schools by a private tutor or other person holding a valid credential for the grade taught (Education Code Section 48224 [12155])
5. Children who are in entertainment or allied industries and who are taught by qualified persons or organizations (Education Code Section 48225 [12155.5])
6. Children who are blind or deaf to an extent that renders them incapable of receiving instruction in the regular elementary or secondary schools (Education Code Section 48226 [12156])
7. Children who, on the recommendation of the principal, the supervisor of attendance, or the superintendent of schools and upon the approval of the Superintendent of Public Instruction, have been assigned to a vocational course in a place of employment (Education Code sections 48227-48228 [12157-12158]) (Such children must be over the age of fourteen and must have a valid work permit.)
8. Children who hold permits to work (Education Code Section 48230 [12160]) (Such children are subject to compulsory attendance upon part-time classes, however.)

Any person who has control of a minor and who fails to comply with any of the provisions of the compulsory education law related to minors ages six to sixteen, unless excused or exempted therefrom, is guilty of a misdemeanor and is subject to a fine or imprisonment (Education Code Section 48293 [12454]).

Compulsory Education for Minors Ages Sixteen to Eighteen

As provided by Education Code Section 48400 [12551], all persons who are at least sixteen but under eighteen years of age and who are not exempted by statute shall attend special continuation education classes maintained by the governing board of the high school district or unified district in which they reside or by the governing board of a neighboring high school district or unified district for not less than four 60-minute hours per week for the regularly established annual school term. In addition Education Code Section 48450 [12751] stipulates that each parent, guardian, or other person having control of a minor required to attend such classes must compel such attendance.

Education Code Section 48410 [12601] provides for exemption from compulsory continuation education of persons who:

1. Have been graduated from a high school maintaining a four-year course above grade eight or who have had an equal amount of education in a private school or by private tuition
2. Are in attendance upon a public or private full-time day school or satisfactory part-time classes maintained by other agencies
3. Are disqualified for attendance upon these classes because of their physical or mental condition or because of personal services that they must render to their dependents
4. Are satisfactorily attending a regional occupational center (ROC) or regional occupational program (ROP) as provided in Education Code Section 48432 [5952]
5. Have demonstrated proficiency equal to or greater than the standards established by the Department of Education pursuant to Education Code Section 48412 [12603] and who have verified approval of their parent or guardian to withdraw from school (Education Code Section 48410 [12601])
6. Are between the ages of sixteen and eighteen, are regularly employed, and are attending classes for adults not less than four hours per week

Any parent, guardian, or other person who has control of a minor required to attend special continuation education classes and who fails to compel such attendance or who fails to retain a copy of the minor's work permit or to present it on request is guilty of a misdemeanor and is liable to a fine or imprisonment (Education Code sections 48450 [12751] and 48454 [12756]).

II Student Behavior

The information presented in Section II concerns discipline; corporal punishment; codes related to students' dress, appearance, and grooming; and smoking by students.

Discipline

Students of all ages have one thing in common: A few of them break the rules of the school that they attend. The vast majority of incidents requiring the disciplining of students are settled within the school system. However, instances of students soliciting the assistance of the courts in their efforts to have adverse decisions by school authorities reversed are not uncommon. The perplexity of this type of problem is a familiar one: Schools must have the authority to establish and enforce both academic and disciplinary rules to further their efficient operation, while the student charged with a violation of these rules has the opposing interest of protecting himself or herself from being unreasonably deprived of his or her civil liberties and educational opportunities.

In California the Legislature has given to school authorities the power to maintain discipline in order that the public school system may function in accordance with its intended purpose. In like manner the Education Code provides that all students in public schools must comply with the regulations, pursue the required courses of study, and submit to the authority of the teachers (Education Code Section 48921 [10609]). The code further provides that teachers must enforce the course of study, the use of legally authorized textbooks, and the prescribed rules and regulations (Education Code Section 44805 [13556]) and that they must hold students to a strict account for their conduct on the way to and from school, on playgrounds, and during recess (Education Code Section 44807 [13557]).

Suspension

As stated in Education Code Section 48901 [10601], a teacher may, for specified cause, suspend a student from his or her class for the day of the suspension and the day following. Immediately after taking such action, the teacher must report the suspension to the school principal and must send the student to the principal for appropriate action. As soon as possible after suspending the student, the teacher must ask the student's parent or guardian to attend a parent-teacher conference regarding the suspension. Education Code Section 48903 [10601.5] gives the principal of the school the authority to suspend a student for specified cause for not more than five consecutive schooldays.

Except in an emergency situation, a suspension by the principal must be preceded by an informal conference between the student and the principal

or his or her designee. As used in the Education Code, the term *emergency situation* means "a situation determined by the principal to constitute a clear and present danger to the lives, safety, or health of pupils or school personnel." If practicable, the teacher or supervisor who referred the student to the principal shall also attend the conference. At the conference the student must be told of the charges and evidence against him or her and must be given an opportunity to present his or her version of the situation and evidence in his or her defense (Education Code Section 48903 [10607]).

If the principal determines that an emergency situation exists and thus suspends a student without a conference, a conference shall be held within 72 hours of the ordering of the suspension (Education Code Section 48903 [10607]).

Within 24 hours of the beginning of a suspension, the principal must mail a written notice of the suspension to the student's parent or guardian. Also within 24 hours of the beginning of a suspension, the principal or his or her designee must attempt to contact the student's parent or guardian in person or by telephone to communicate the information contained in the written report (Education Code Section 48903 [10607]).

Whenever a principal suspends a student, the student or the student's parent or guardian may appeal the suspension to the district superintendent or the superintendent's designee. The superintendent or his or her designee must, within three schooldays after receiving the request for a meeting, grant a hearing (Education Code Section 48904 [10603]). Within two schooldays after the hearing, the superintendent or his or her designee shall determine whether or not sufficient evidence of the violation existed and whether the penalty imposed was appropriate for the violation (Education Code Section 48904).

No student may be suspended for more than 20 schooldays in one school year. If, for adjustment purposes, a student is transferred to or enrolled in another regular school, an opportunity class in his or her school of residence, an opportunity school or class, or a continuation education school or class, the number of additional days of suspension following the reassignment of the student is limited to ten (Education Code Section 48903 [10607.5]).

To the degree that such opportunities can be reasonably provided, a suspended student shall be allowed to complete all assignments and to take all tests missed during his or her suspension. Upon satisfactory completion of make-up work, the student shall receive full credit for such work (Education Code Section 48903.5).

A student may not be suspended until other forms of correction have failed to bring about proper conduct on his or her part (Education Code Section 48900.2 [10605]).

Expulsion

The governing board of a school district may expel a student for specified cause. As used in the Education Code, the term *expulsion* is defined as suspension from regular classroom instruction for more than five schooldays. Before expelling a student, the governing board must determine that (1) other measures of correction have failed to bring about proper conduct; (2) other means of correction are not feasible; or (3) the nature of the student's violation is such that the presence of the student causes a continuing danger to the physical safety of the student or others (Education Code Section 48904.5).

Within 20 calendar days after a recommendation for expulsion, or within 25 calendar days of the date the suspension is ordered, whichever is sooner, the governing board must grant a hearing to the student and his or her parent or guardian. A written notice of the hearing must be given to the student and the student's parent or guardian at least ten days before the hearing date. The student may be represented by an attorney or other representative, may inspect and obtain a copy of all relevant documents, may question witnesses, and may present evidence in his or her behalf. The hearing shall be closed to the public unless the student or the parent or guardian requests that the hearing be a public hearing. The hearing may be conducted by (1) the governing board itself; (2) a state or county hearing officer; or (3) a panel of three certificated employees of the district, none of whom shall be on the staff of the school in which the student is enrolled. In lieu of having the hearing panel consist exclusively of district employees, the governing board may request the services of one or more certificated persons not employed by the district (Education Code Section 48914 [10608]).

If the governing board, hearing officer, or panel reverses the decision to expel, the student shall be reinstated to school. If a hearing officer or panel recommends expulsion, the governing board must base its decision on the evidence presented at the

hearing. Regardless of whether an expulsion hearing is conducted in private or in public by the governing board, a hearing officer, or a panel, the governing board must take its final action to expel at a public meeting. If the decision of the governing board is to expel the student, the student or the student's parent or guardian must be notified in writing of (1) the governing board's decision; and (2) the right to appeal the expulsion to the county board of education (Education Code Section 48914 [10608]). The student or the student's parent or guardian may appeal the expulsion to the county board of education within 30 days following the governing board's decision to expel (Education Code Section 48915 [10609]).

A student may not be expelled unless other means of correction have repeatedly failed to bring about proper conduct on the part of the student (Education Code Section 48904.5 [10605]).

Grounds for Suspension and Expulsion

Pursuant to Education Code Section 48900 [10601], a student may be suspended and expelled for any of the following actions while he or she is on school grounds or while he or she is off school grounds *and* involved in an activity related to school attendance:

1. Causing or attempting to cause damage to school property or stealing or attempting to steal school property
2. Causing or attempting to cause damage to private property or stealing or attempting to steal private property
3. Causing, attempting to cause, or threatening to cause physical injury to another person except in self-defense
4. Possessing, selling, or otherwise furnishing any firearm, knife, explosive, or other dangerous object of no reasonable use to the student at school or at a school activity off school grounds
5. Unlawfully possessing, using, selling, or otherwise furnishing or being under the influence of a restricted drug, alcoholic beverage, or intoxicant
6. Possessing or using tobacco except in a designated smoking area
7. Committing an obscene act or engaging in habitual profanity or vulgarity
8. Disrupting school activities or defying the authority of school supervisors, teachers, or administrators

Education Code sections 48320–48324 [12500–12504] provide for special school attendance review boards in each county in California, and in some school districts, to assist in coordinating resources and promoting programs to meet the special needs of students who have school attendance problems or who are behavior problems in school.

Transfer to Continuation School

A pupil may be transferred involuntarily to continuation school on finding that he or she has committed any acts set forth in Education Code Section 48900 or has been habitually truant or who is irregular in attendance at school.

The procedure for transferring a pupil involuntarily to continuation school shall include written notice to the pupil and his or her parents, informing them of the opportunity to request a meeting to hear the specific facts and reasons for the transfer. At this hearing the pupil and the parents may inspect all documents relied upon, question evidence and witnesses, and present evidence on behalf of the pupil. The pupil may designate representatives and witnesses to be present with him or her.

An involuntary transfer to continuation school shall not extend beyond the end of the semester following the semester during which the acts leading to the transfer occurred unless the local board has adopted a policy for yearly review of the involuntary transfer.

Pupils who have voluntarily transferred to continuation school shall have the right to return to the regular high school at the beginning of the following school year, or with special consent may return at any time (Education Code Section 48432.5).

Corporal Punishment

The governing board of a school district may adopt rules and regulations authorizing teachers, principals, or other certificated personnel to administer reasonable corporal punishment when such punishment is deemed an appropriate corrective measure (Education Code Section 49000 [10854]). However, even when the governing board has adopted a policy of corporal punishment, such punishment shall not be administered to a student unless the student's parent or guardian has given written approval for such action (Education Code Section 49001 [10855]).

At the beginning of the first semester or quarter of the regular school term, the governing board of a district that has adopted a policy of corporal punishment shall notify the parent or guardian that corporal punishment shall not be administered to a student without the prior written permission of the student's parent or guardian. The notice shall be a written notice and should be in a language that is understandable by the parent (Education Code Section 49001 [10855]).

A teacher, vice-principal, principal, or any other certificated employee of a school district shall not be subject to criminal prosecution for the exercise, during the performance of his or her duties, of the same degree of physical control over a student that the student's parent or guardian would be legally privileged to exercise. The degree of physical control that a certificated employee exercises shall not exceed the amount of physical control reasonably necessary to maintain order, protect property, protect the health and safety of students, or maintain proper and appropriate conditions conducive to learning (Education Code Section 44807 [13557]).

Dress Codes, Grooming, and Appearance

The Legislature has given to school district governing boards the authority to prescribe rules for the operation of the schools under their jurisdiction (Education Code Section 35291 [1052]). Such rules must be consistent with law and with the rules prescribed by the State Board of Education. The authority of a governing board includes adopting rules and regulations relating to the appearance of students, including their dress. A school district may enforce these provisions by suspending or expelling a student who refuses or neglects to obey the rules prescribed by the governing board. Several lawsuits have resulted from regulations on hair lengths and dress codes. The California courts have held that the power to adopt these rules and regulations remains with the school district governing board; the board's power to do so has never been declared unconstitutional. However, many dress codes have been held constitutionally defective in their content. To pass the test of constitutionality, dress code rules must not be vague and must have a reasonable relation to the educational process.

Under the rule-making power of the State Board of Education, the following has been adopted (Section 302 of the California Administrative Code, Title 5, Education):

> A pupil who goes to school without proper attention having been given to personal cleanliness or neatness of dress may be sent home to be properly prepared for school, or shall be required to prepare himself [or herself] for the schoolroom before entering.

Two federal court cases, *King* v. *Saddleback Junior College District* (445 F. 2d 932 [1971]) and *Olff* v. *Eastside Union High School District* (U.S. App. 305 F. Supp. 557 [1969]), have upheld the school district's right to establish regulations for the day-to-day operation of its schools, including its right to develop a dress code, to specify acceptable hair length, and to demand conduct that is conducive to the fulfillment of its responsibility to educate.

Smoking Areas

Unless permitted by governing board rules and regulations, smoking or having tobacco while under the authority of school personnel or while on school premises constitutes good cause for suspension or expulsion (Education Code Section 48903.5 [10602.5]).

Education Code Section 48903.5 [10602.5] does authorize the governing board of any school district maintaining a high school to adopt rules and regulations permitting the students of the high school to smoke and possess tobacco in a defined smoking area or areas on the high school campus or while under the authority of school personnel. This section also provides that the school district shall take all steps it deems practical to discourage high school students from smoking.

Penal Code Section 308 provides that it is unlawful for any person, firm, or corporation to sell, give, or furnish any type of tobacco product to anyone under the age of eighteen.

III
Educational Opportunity

The information presented in Section III deals with proficiency standards, independent study, options in physical education classes, special programs, school attendance of married students, school attendance of pregnant students, and the grounds on which students may be excluded from school.

Proficiency Standards

By June, 1978, the governing boards of all high school districts and unified school districts maintaining junior, senior, and four-year high schools must adopt standards of student proficiency in the basic skills, including, but not limited to, reading comprehension, writing, and computation. By June, 1979, the governing boards of all elementary school districts and unified school districts maintaining grades six or eight, or the equivalent, must adopt such proficiency standards (Education Code Section 51215 [8574.5]).

In developing proficiency standards, governing boards must involve parents, school administrators, teachers, and counselors in the process; students must be involved in the development of standards for the high schools (Education Code Section 51215 [8574.5]).

Beginning in 1978-79 for high schools, and in 1979-80 for elementary schools, the progress of students toward meeting the proficiency standards shall be assessed at least once in grades four through six, once in grades seven through nine, and twice in grades ten through eleven. Once a student has met the standards up to prescribed levels for graduation from high school, his or her progress need not be reassessed (Education Code Section 51215 [8574.5]).

A student who does not demonstrate sufficient progress toward mastery of basic skills has the right to participate in a conference with the school principal or the principal's designee about his or her progress. The parent or guardian of such a student also has the right to meet with the principal or the principal's designee to discuss the assessment results and recommended actions to further the student's progress (Education Code Section 51216 [8574.5]).

After June, 1980, a student who has not met the locally adopted proficiency standards shall *not*

receive a diploma of graduation from high school (Education Code Section 51225 [8574]).

By January 1, 1979, governing boards, with the active involvement of parents, administrators, teachers, and students shall adopt alternative means for students to complete the prescribed course of study mandated in existing law (Education Code Section 51225 [8574]).

Independent Study

Students in grades seven through twelve may participate in an independent study program as an alternative to a regular classroom program of instruction. The school district governing board authorizing the independent study program shall adopt written policies and procedures governing such study. All courses of independent study shall be designed to fit the educational needs of the participating students.

The program for each student must be established by a contract among the student, the school, the parent, and the individual supervising the student. This contract should ideally include a statement of objectives, the manner in which the student's progress is to be evaluated, the manner and times of reporting on the student's progress, and the length of time expected to be required for achievement of the objectives. Students of an elementary or secondary school, an opportunity school, or a continuation high school may enroll in the district's independent study program (Education Code Section 51745; sections 11700–11703 of the California Administrative Code, Title 5, Education).

Physical Education Options

In 1975 the Legislature amended Education Code sections 51222 [8572] and 51241 [8702], which deal with exemptions for students from physical education classes. The law now permits governing boards to exempt permanently from courses in physical education those students who (1) have completed grade ten; (2) are sixteen years of age or older and have been enrolled in grade ten for one academic year or longer; or (3) are enrolled as a postgraduate student.

The governing boards of school districts that maintain a high school are required to offer a variety of elective physical education courses to exempted students in grades eleven and twelve. Students who are exempt are prohibited from attending fewer total hours of courses and classes than they would have attended in regular physical education classes.

Special Programs

As part of California's commitment to provide equal educational opportunities for all students, the public schools conduct several types of programs that are designed to provide educational services to students with exceptional or special needs.

Special Education

Special education programs are designed to meet the needs of all school-age handicapped students. Federal legislation (Public Law 94-142) requires states, as a condition of receiving federal funds for special education, to provide a free appropriate education to all school-age handicapped persons. Public Law 94-142 establishes extensive rights and protections for handicapped students and their parents and corresponding obligations of local educational agencies. The provisions of this federal law are currently implemented statewide in California.

In 1974 California pioneered in the field of special education with the creation of the California Master Plan for Special Education as a pilot program (Education Code sections 56300–56367). In 1977 the California Legislature reaffirmed its commitment to the California Master Plan by eliminating the characterization as a pilot program and providing for the statewide phase-in of the Master Plan by school year 1981-82. The California Master Plan establishes for handicapped students and their parents rights and protections which are in excess of those established by federal laws. In general, Master Plan districts or counties must seek out and identify every child eligible for special education services, must design an individual learning plan for each child, and must provide educational services that meet the needs of the child at no expense to the parent or guardian. Parents and guardians must consent to evaluation of their child for special education services and to their child's special education program, and they have the right to participate in the planning of the child's special education program. Both a parent and a local educational agency have the right to request an administrative hearing regarding assignments on the identification, assessment, or educational placement of a child; or the provision of a free, appropriate education of the child.

Compensatory Education

Currently, three basic programs for educationally disadvantaged students are maintained in California public schools: ESEA, Title I, programs;

educationally disadvantaged youth programs; and bilingual education programs.

ESEA, Title I, programs. The majority of California schools provide compensatory education programs under provisions of Title I of the Elementary and Secondary Education Act (ESEA) of 1965 (Title 20, USC, Section 241(a). ESEA, Title I, programs offer educational services beyond regular services to children from low-income families. Each district with an ESEA, Title I, program and each school participating in the program must have an advisory committee, the membership of which must be comprised of more than a simple majority of parents of program participants.

The State Board of Education has established a grievance procedure for the processing of complaints of alleged violations of ESEA, Title I, regulations; other pertinent federal regulations; and state regulations (Section 3948 of the California Administrative Code, Title 5, Education).

Educationally disadvantaged youth programs. Educationally disadvantaged youth (EDY) programs (Education Code sections 54000–54007 [6499.230–6499.238]) are state-funded programs similar to those conducted under ESEA, Title I. Educationally disadvantaged youth programs and bilingual education are both now funded by the State Economic Impact Aid Program (Education Code sections 54020, et seq.).

A principal requirement for applicants for EDY funds is the development of a school-site plan in which applicants describe the specific services that will be provided to meet the individual needs of eligible students (sections 3900–3947 of the California Administrative Code, Title 5, Education).

Bilingual education. California is committed to developing and maintaining programs to meet the needs of limited- and non-English-speaking students. Pursuant to provisions of the Bilingual-Bicultural Education Act of 1976 (Education Code sections 52160–52179 [5767–5767.18]), school districts must, as a minimum, establish individual learning plans for meeting the needs of such children. A school that has ten or more non-English-speaking students or 15 or more limited-English-speaking students with the same primary language in the same grade level must offer a full bilingual instruction program or a bilingual-bicultural education program (Education Code Section 52165 [5767.4]). The requirement that the school offer a full bilingual program or full bilingual-bicultural education program is dependent upon the school's receiving funds for such programs or receiving a specified amount of other state and federal monies that are wholly or partially intended for use in meeting the needs of limited- or non-English-speaking students. The requirement for individual learning plans for limited- and non-English-speaking students is not dependent upon receipt by the school district of state education funds. Individual learning programs are designed to be consistent with the ruling of the United States Supreme Court in the case of *Lau* v. *Nichols* (414 U.S. 563 [1974]). In the opinion of the Court, failure to provide instruction in a language that students can understand is discrimination on the basis of national origin.

School Attendance of Married Students

No court cases involving the issue of the school attendance of married students are pending in California. However, in the 1929 case of *McLeod* v. *State* (154 Miss. 468), the Mississippi Supreme Court held that a school board regulation barring persons from the schools solely on the basis of their being married was arbitrary and unreasonable and therefore void. In support of this holding, the court stated:

> Marriage is a domestic relation highly favored by the law. When the relation is entered into with correct motives, the effect on the husband and wife is refining and elevating . . . And furthermore, it is commendable in married persons of school age to desire to further pursue their education and thereby become better fitted for the duties of life.

In an opinion dated April 24, 1962 (39 Ops. Cal. Atty. Gen. 256), the California Attorney General concluded that:

> The governing board of a school district does not have the authority to exclude pupils from the public school solely by reason of their married status.

In the same opinion the California Attorney General stated that the *McLeod* case was well reasoned and that the courts in California would probably reach the same conclusion.

Under the compulsory education law, a married person under the age of eighteen must attend a public or private day school unless exempted by statute.

School Attendance of Pregnant Students

In California a pregnant student may not be discriminated against in any aspect of the educational program, including compulsory participation in or exclusion from any classes or extracurricular

activities. School systems may operate programs, schools, and classes for pregnant students; or such students may receive individual instruction in their own home. However, attendance in any of the above must be truly optional; it must be at the request of the student or upon the student's doctor's certification that such is necessary. Attendance is not considered optional if the only options are leaving school or enrolling in a special program. Any disability related to pregnancy shall be treated in the same manner and under the same policies as any other temporary disability or physical condition (Title 20, United State Code, Section 1684; Title 45, Code of Federal Regulations, Section 86.40).

It is now possible for students to obtain, without parental consent, information about and/or treatment for venereal disease, pregnancy, abortion, and birth control. Schools officials are authorized, but not required, to excuse a student from school for the above purposes. Absences for such purposes need not be verified by the parent and may be verified instead by a school official. Schools need not volunteer to a parent the fact of a student's absence or the reason therefore. Upon specified request for such information by the parent or guardian, however, the school may not keep such information confidential (Civil Code Section 34.5; Education Code Section 46010 [10953]; Section 421 of the California Administrative Code, Title 5, Education).

Exclusion from Schoo!

As provided in Education Code Section 48212 the governing board may exclude from attendance any student whose physical or mental disability is such as to cause his or her attendance to be inimical to the welfare of other pupils. Before such exclusion, parents shall be notified of the facts leading to the decision to exclude the child and shall be given the right to meet with the governing board to discuss the proposed exclusion. At such meeting the parents shall be given the opportunity to inspect all documents relied on for the proposed exclusion; challenge evidence; question witnesses; and present evidence on the child's behalf, including calling witnesses.

Should a child be excluded from attendance pursuant to Health and Safety Code Section 3118 (when a child resides where any contagious, infectious, or communicable disease exists) or Education Code Section 49451 (when good reason exists for believing that the child is suffering from a recognized contagious or infectious disease), the governing board is not required to send prior notice of the exclusion to the parent or guardian.

IV Free Speech

The information presented in Section IV deals with students' freedom of expression, students' refusal to salute the flag, religion in the schools, student involvement in school affairs, student organizations, student independent newspapers, and student representatives on school district governing boards.

Student Expression

Education Code Section 48916 [10611] contains the following statement about students' freedom of expression:

> Students of the public schools have the right to exercise free expression including, but not limited to, the use of bulletin boards, the distribution of printed materials or petitions, and the wearing of buttons, badges, and other insignia, except that expression which is obscene, libelous, or slanderous according to current legal standards, or which so incites students as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school, shall be prohibited.

Education Code Section 48916 also extends the right of free expression to official student publications and limits the authority of faculty journalism advisers to prohibit the publication of student materials. However, the advisers are charged with the responsibility of ensuring that the publications are not in violation of any provision of Education Code Section 48916 and that professional standards of English and journalism are maintained in the publications.

Education Code Section 48916 [10611] also requires that the governing board of a school district and each county superintendent of schools must adopt rules and regulations relating to the exercise of free expression by students upon the premises of each school under their control. These rules and regulations shall include reasonable provision for the time, place, and manner of conducting such activities.

Refusal to Salute the Flag

In 1938 in the case of *Gabrielli* v. *Knickerbocker* (12 Cal. 2d 85), the California Supreme Court held that a pupil had been properly expelled from school for refusing to salute the American flag; later, however, the U.S. Supreme Court handed down an opposite decision in another case. It held, in the case of *West Virginia State Board of Education* v. *Barnette* (319 U.S. 624 [1943]), that the action of the State Board of Education in requiring public school students to salute the flag while reciting the Pledge of Allegiance, under penalty of expulsion, exceeded the constitutional limits of the power of the board and violated the First and Fourteenth Amendments. The *Barnette* case involved children who refused to salute the flag because such action was against their religious beliefs. In subsequent cases the courts have also held that requiring students to utter what is not in their minds is a violation of their freedom of speech. Thus, students may stand quietly during the giving of the Pledge of Allegiance to the flag.

They do not, however, have the right to disrupt the exercise.

Each school day in every public school appropriate patriotic exercises shall be conducted. The giving of the Pledge of Allegiance to the flag of the United States of America is one way in which this requirement may be met (Education Code Section 52720 [5211]; Section 21 of the California Administrative Code, Title 5, Education).

In elementary schools the patriotic exercises shall be conducted at the beginning of the first regularly scheduled class in which the majority of the pupils normally begin the school day. In secondary schools the exercises shall be conducted in accordance with regulations established by the district governing board.

Religion

The First Amendment of the U.S. Constitution mandates the separation of church and state and guarantees to each person the right to exercise his or her religious beliefs (*Epperson* v. *Arkansas*, 393 U.S. 97 [1969]).

Religious Clubs

Student religious clubs may not meet on high school premises outside of school hours or during lunch hours if such clubs are devotional rather than academic in nature and if payment is not contemplated in exchange for the use of the school premises (*Johnson* v. *Huntington Beach Union High School District*, 68 Cal. App. 3d 1 [1977]). Although cases on this issue are still pending, clubs are apparently allowed to use school facilities if they are more or less comparative religious studies groups or if they pay for the use of the school facilities.

Prayers

The U.S. Supreme Court has held that compulsory verbal prayer in the public schools is a violation of the First Amendment prohibition against the establishment of religion (*Engel* v. *Vitale*, 370 U.S. 421 [1962]). The California Attorney General has opined that religious prayers may not be made a part of the curriculum of the public schools (25 Ops. Cal. Atty. Gen. 316).

Christmas Programs

The public schools must avoid promotion of a religion or indoctrination of their students in a religion. For example, the displaying of a nativity scene on the school premises may be in violation of the U.S. Constitution. Symbols of Christmas, such as Santa Claus, a Christmas tree, reindeer, holly wreaths, and yule logs, may fall into the category of permitted display items. Schools are entitled to explain the nature of religious days as well as civil holidays, and they may explain the meaning of religious days to members of the religions involved. Such programs, however, must be explanatory rather than devotional. It is important that no person's religious freedom be infringed upon and that all students and teachers be able to participate in holiday observances.

Student Involvement

In recent years school authorities nationwide have become increasingly aware of the importance of student involvement in school affairs, such as curriculum planning and the formation of criteria concerning proper student conduct. Many people believe that active participation by students (1) enriches their education and improves and strengthens the educational institutions; (2) can help reduce communication barriers between the students and school authorities; (3) can ensure a maximum of curricular relevancy; and (4) helps make students responsible for their behavior.

Obviously, the degree to which students become involved is highly dependent upon not only the age, maturity, and sophistication of the students but also upon the complexity of the issues in question. However, since the students are the "consumers" and must conform to the standards of conduct, dress, and grooming set down by the school authorities, they should have some type of representation in the making of such standards; and their suggestions should receive careful analysis and full consideration.

Education Code sections 52000–52039, which were added by AB 65 (Chapter 894, Statutes of 1977), provide for the improvement of elementary, intermediate, and secondary schools through the development and implementation of school improvement plans. The responsibility for developing and implementing such plans is vested in a school-site council. In secondary schools the membership of the school-site council must include students selected by students who attend the school.

In short, student participation in school affairs can be seen as an extension of their education. Schools should encourage students to express their opinions, to take stands on controversial issues, and to present ideas that could help improve the educational process.

Student Organizations

Education Code Section 48930 [10701] authorizes any group of students to organize within the public schools a student body association, which shall be subject to the approval and the control and regulation of the governing board of the school district. Any such organization must not be in conflict with the authority and responsibility of the public school officials and must have as its purpose the conduct, on behalf of all the students, of activities approved by the school authorities.

Education Code sections 48933 [10703] and 48936 [10703.5] also stipulate that the funds of the student body organization must be deposited in a federally insured bank or banks or invested in a manner approved by the governing board of the district. The funds shall be spent in the manner established by the student body organization, subject to the approval of (1) an employee or school district official designated by the governing board; (2) the certificated employee who is the designated adviser of the student body organization; and (3) a representative of the student body organization. The supervision of all funds raised by any student body or student organization using the name of the school shall be provided for by the governing board.

As provided in Education Code Section 48905 [10604], it is unlawful for any student of an elementary or secondary school in California to join or take part in the organization or formation of any secret fraternity, sorority, or club whose membership is wholly or partly made up of public school students. However, this sanction should not be construed to prevent any student from joining any type of organization not directly associated with the public schools of the state.

Student Independent Newspapers

The term *independent newspapers* or *underground newspapers* generally refers to periodicals that are written and published by students at their own expense, off school premises, and that are not officially sanctioned by school authorities. Court decisions (*Burnside* v. *Byars*, 363 F. 2d 744 [1966]; *Scoville* v. *Board of Education of Joliet Tp. H.S. Dist. 204, etc., Ill.*, 425 F. 2d 10 [1970]; and *Sullivan* v. *Houston Independent School District*, 307 F. Supp. 1328 [1969]) have made it quite clear that student independent newspapers are protected by the First Amendment from suppression by public school officials. The courts have held that such newspapers can be distributed on public school premises without prior censorship, provided that (1) the papers do not contain materials that are either actionably libelous or obscene (*Baker* v. *Downey City Board of Education*, 307 F. Supp. 517 [1969]); (2) their distribution is not proven to be the direct cause of concurrent disruptions (*Scoville* v. *Board of Education of Joliet Tp. H.S. Dist. 204, etc., Ill.*); and (3) administrators do not have conclusive proof that directly related disruptions would occur in the future (*Whitfield* v. *Simpson*, 312 F. Supp. 889 [1970]).

Although student underground newspapers are protected to an extent by the First Amendment, the legal status of these publications still remains uncertain. One must remember that school authorities are given the power to maintain order within the school and that in doing so they may prohibit underground newspapers from the school grounds if they believe that such publications would cause a disturbance or disrupt the learning process in the school. As stated by the court in the case of *Norton* v. *Discipline Committee of East Tennessee State University* (419 F. 2d 195 [1969]):

> It is not required that the ... authorities delay action against inciters until after the riot has started and buildings have been taken over and damaged. The ... authorities had the right to nip such action in the bud and prevent it in its inception.

The court also noted in the case of *Baker* v. *Downey City Board of Education* (307 F. Supp. 517 [1969]) that, while students have the right to criticize and dissent, they may be more severely restricted in their method of expression than are their elders: "The education process must be protected and educational programs properly administered."

In the recent case of *Susannah Bright* v. *Los Angeles Unified School District* (18 Cal. 3d 450 [1976]), the California Supreme Court concluded that state law gives to students the right to distribute or sell materials that are not libelous or obscene or that do not incite students in such a way as to create a clear and present danger of the commission of unlawful acts or the violation of lawful school regulations or the disruption of the orderly operation of the school. School authorities *may* require that materials be submitted to them a reasonable time in advance of sale or distribution but *may not* require prior approval.

The court also made it clear that the school may discipline a student who distributes libelous or

obscene material, incites others to violate the law or school regulations, or disrupts the operation of the school.

Student Representative on Governing Board

Education Code Section 35016 [924.6] permits a prescribed number of high school students to petition for a student member to be included on the school district governing board. The number of required signatures is set at 500 or 10 percent of the district's high school students, whichever is less. Upon receipt of such a petition, each school district governing board maintaining one or more high schools will be required to add one nonvoting student member, who shall serve a one-year term and be granted the right to attend each and all governing board meetings, except executive sessions. The nonvoting member is entitled to the same travel allowances as voting members but, unlike regular members, is not entitled to compensation for attendance at board meetings.

The California State Board of Education has had a student representative since 1969. This student, chosen annually by California Association of Student Councils, does not have a vote but participates as a Board member in all other respects, including participating in discussions and attending executive sessions.

V
Law Enforcement Agencies and the Schools

The information presented in Section V pertains to the presence of law enforcement officers in the schools and searches and seizures.

Law Enforcement Officers in the Schools

Law enforcement officers have not only the right but also the duty to use all necessary and proper means to protect society. In the performance of their duty throughout the community, they have the right to interview and, when necessary, to arrest students who are in attendance at school. When law enforcement intervention is reasonably necessary, it is also quite frequently of immediate urgency. To permit a student to claim school as a "sanctuary" might not only hinder but also, in many cases, effectively prevent the apprehension of serious violators of the law (32 Ops. Cal. Atty. Gen. 46, at 47). While the constitutional rights of students may not be infringed upon by law enforcement officers, school officials are not required nor should they attempt to prevent such officers from accomplishing their intended goal (54 Ops. Cal. Atty. Gen. 46).

One must remember that a student is not property; he or she is a citizen of the State of California and, as such, is under its guardianship and subject to its supervision. Whenever a student violates the laws of the state, the state, in its role of *parens patriae* ("acting as though it were parents"), may intervene and take custody of the student to protect that student as well as society. When such action is required, the custody of the parent, guardian, or school officials, who stand *in loco parentis* ("in place of the parent"), is superseded by that of the state. Thus, consent of the parent, guardian, or school officials is not a prerequisite to the state's action, since the parent, guardian, or school officials at that time have lost their custody to the state. Although law enforcement officers do not have to obtain the consent of the parent, guardian, or school officials prior to placing a child in custody, once they have done so, they must immediately convey notice of that action to the parent or guardian as well as to the proper school authorities.

The utmost consideration must be given to the rights and interests of all persons involved in the types of cases under consideration in this section. Whenever possible, law enforcement officers

should not take any action without giving prior notice to the parent or guardian of a student. Whenever possible, school officials should be present when law enforcement officers question a student. Certainly a student should not be removed from school without notice of that fact having been conveyed to the proper school authorities. When a student is detained for any reason, the parent or guardian should be informed of that fact immediately.

In summary, a law enforcement officer, in the performance of his or her duty, is endowed with the power to arrest or question a student while the latter is in attendance at school (54 Ops. Cal. Atty. Gen. 96). However, in taking such action, a law enforcement officer must give due consideration and recognition to the rights and responsibilities of all persons involved. Furthermore, whenever possible, school officials should be consulted before the law enforcement officers act. Parental consent is not a prerequisite to arresting or questioning a student or to removing him or her from school to accomplish these ends. The parent or guardian should, however, be informed immediately of any such action (32 Ops. Cal. Atty. Gen. 46).

Searches and Seizures

The courts have demonstrated quite clearly that students are not entitled to the same degree of Fourth Amendment rights as adults are entitled to. It is clear, however, that the Constitution is not entirely inapplicable to students and that it does place some limits on the conduct of school officials who have been given the authority, within the scope of their duties, to detain and search a student while the student is under the control of the school (*In re* Thomas G., 11 Cal. App. 3d 1193). When the purpose of a search is within the scope of the school official's duties, the justification thereof is not measured by the rules authorizing the search of an adult by the police (*In re* Fred C., 26 Cal. App. 3d 320).

Although proper school authorities may conduct searches whenever such searches reasonably fall within the scope of their duties and responsibilities, the Constitution, as was indicated before, prohibits searches at the whim of the school officials. A search by a school official must generally meet two conditions. First, the search must be within the scope of the school official's duties. Second, the search must be reasonable in terms of the facts and circumstances of the case. As the court stated in the case of *People* v. *Ingle* (53 Cal. 2d 407), "There is no exact formula for the determination of reasonable cause for an arrest; each case must be decided on its own facts and circumstances, and on the total atmosphere of the case."

Emancipated Minors

Certain persons under eighteen years of age are deemed to be emancipated minors. They must have received a judicial declaration of emancipation (Civil Code sections 62–64).

VI Prohibitions Against School Districts and Personnel

The information presented in Section VI concerns the levying or requiring of fees, deposits, and charges to students and sex discrimination.

Fees, Deposits, and Charges

The authority for providing free public schools in California is set forth in Article IX, Section 5 of the California Constitution, which provides that:

> The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

In the laws that it has enacted to establish and govern the system of public schools, the Legislature has adhered very closely to the constitutional mandate for free public schools and has consistently withheld authority for school districts to charge fees, require deposits, or make other charges at the elementary or high school levels.

Prohibitions Against Fees and Other Charges

Opinion NS 2469 (March 30, 1940) of the California Attorney General clearly states that charges and fees of all types are strictly prohibited. In this opinion reference is made to the California Supreme Court case of *Ward* v. *Flood* (48 Cal. 36), in which the court took the positive position that the law of the state established a public school system to be maintained for the benefit of the youth of the state who were entitled under the California Constitution "to be educated at the public expense."

Section 350 of the California Administrative Code, Title 5, Education, contains the following language:

> A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law.

The provision cited above was contained in the rules and regulations of the State Board of Education at the time that the Attorney General's opinion was written in 1940, and it remains in the regulations today.

Instructional materials must be furnished by elementary, high school, and unified school districts to their students, except adults in classes for adults, and no charge may be made for their use (Education Code sections 60070 [9280], 60410 [9620], and 60411 [9621]).

Writing and drawing paper, pens, ink, crayons, lead pencils, and other necessary supplies shall be furnished under the direction of the governing board of each school district (Education Code Section 40011 [16519]).

On the basis of existing statutes, State Board of Education rules and regulations, opinions of the Attorney General, and court decisions, the following general statement can be made with regard to fees, deposits, and charges: no fees, deposits, or charges of any kind may be made for instructional

program items or materials, except in classes and/or programs for adults. In accordance with this general statement, the following are prohibited:

1. A deposit in the nature of a guarantee that the district would be reimbursed for loss to the district on account of breakage, damage to, or loss of school property
2. A fee for towel service or for expendable supplies in a laboratory or shop
3. A charge for furnishing transportation to students
4. An admission charge to an exhibit, fair, theater, or similar activity when a visit to such places is part of the district's educational program
5. A tuition fee or charge as a condition for enrollment in any class or course of instruction, including a fee for attendance upon a summer or vacation school, a registration fee, a fee for a catalog of courses, a fee for an examination in a subject, a late registration or program change fee, a fee for the issuance of a diploma or certificate, and a charge for lodging
6. Membership fees in a student body organization or any student organization as a condition for enrollment or participation in athletic or other activities sponsored by the school

Permitted Charges

Certain exceptions to the general rule against fees and other charges should be noted:

1. The governing board of a high school district or unified district may require a deposit on books furnished in classes for adults. The deposit shall be refunded when the books are returned, provided they are returned in good condition. Reasonable wear and tear is to be expected (Education Code Section 60410 [9620]).
2. A governing board may charge a fee to adults for any class except classes in English and citizenship for the foreign born and classes in elementary subjects. Also, no charge shall be made for a class for which high school credit is granted when such class is taken by a person not holding a high school diploma (Education Code Section 52612 [5757]).
3. A governing board may, by its own regulations, provide for the sale of materials purchased from the incidental expense account to any student in classes for adults (Education Code Section 52615 [5760]). It may also sell to persons in classes for adults materials needed by such persons for making articles in the classes in which they are enrolled (Education Code Section 39527 [16408]).
4. A school district furnishing materials to a student may sell to the student, at cost, any items that the student has fabricated from such materials (Education Code Section 39526 [16407]).
5. A governing board may charge student fees to students enrolled in community service classes. However, the fees shall not exceed the cost of maintaining such classes (Education Code Section 51815 [6324]).
6. A county superintendent of schools may contract with a student's parent or guardian for a portion of the expenses of lodging and boarding the student in a technical, agricultural, or natural resource conservation school (Education Code Section 1806 [6739]).
7. A governing board shall charge a tuition fee as a condition precedent to admission of a student whose parents are actual and legal residents of a foreign country adjacent to California (Education Code Section 48052 [10508]).
8. A governing board may enter into an agreement with a parent or guardian of a student residing in an adjoining state for the education of that student. The agreement shall provide for the payment to the governing board of an amount sufficient to reimburse it for the total cost of educating the out-of-state student (Education Code Section 48050 [10506]).
9. The Legislature has authorized charges to be made for the transportation of students under limited circumstances as specified in Education Code sections 39804 [16803.1], 39836 [16863], and 39837 [16864].
10. A governing board of a district conducting a study trip (field trip) pursuant to Education Code Section 35330 [1081.5] is required to provide or make available, through accident insurance, medical or hospital service for students injured while participating in such study trips. The cost of the insurance may be paid by the district or by the insured student or his or her parent or guardian (Education Code Section 35331 [1082]).

11. Governing boards are required to provide accidental death insurance and insurance for medical and hospital expenses resulting from accidental bodily injuries for members of an athletic team (Education Code Section 32221 [31752]). The cost of providing such insurance may be borne by the district; the student body; or other persons, including the student covered by such insurance (Education Code Section 32221 [31752]). If the student and his or her parent or guardian are unable to pay the insurance premium, such insurance must be paid for with district funds or student body funds (Education Code Section 32221 [31752]). Governing boards may provide other accident insurance (Education Code sections 49470–49472 [11851–11853]).
12. School districts are authorized to establish cafeterias and sell food to students (Education Code sections 39870–39874 [17001–17006]).
13. A school district may require a borrower of school band instruments, music, uniforms, and other regalia for use on an excursion to a foreign country to make a deposit on such equipment (Education Code Section 40015 [16524]).

Payment for Damage or Loss

The Education Code provides that the parent or guardian of a minor shall be held liable for damage caused by a minor who willfully cuts, defaces, or otherwise injures property belonging to a school district. The parent or guardian is liable also for school district property loaned to a minor and not returned on demand (Education Code Section 48909 [10606]).

Study Trips

A school district may not prevent a student from making a study trip or excursion because of lack of sufficient funds, as provided in Education Code Section 35330 [1081.5]. However, a school district may conduct an activity, such as a study trip, as an extracurricular activity. The student may be required to pay an admission fee to participate in such an extracurricular activity, but the time spent in such activity cannot be counted in the computation of average daily attendance (Section 405 of the California Administrative Code, Title 5, Education).

Students on study trips have the same options that they have on campus with regard to food: they may take food from home, or they may buy it from any available source.

Sex Discrimination

Title IX of the Education Amendments of 1972 (Title 20, USC, Section 1681(a)) provides that, with certain exceptions, "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." In general Title IX prohibits schools from discriminating on the basis of sex in admissions, counseling, educational programs or activities, and employment.

Guidance and Enrollment

The Education Code contains some parallel prohibitions against sex discrimination. For example, Education Code Section 40 [91] prohibits counselors from offering to students of one sex vocational or school program guidance that differs from that offered to students of the opposite sex. Education Code Section 40 [90] also prohibits school districts from either requiring or preventing the enrollment of students in a particular class or course because of their sex. Thus, the practices of placing only male students in shop classes and only female students in homemaking classes are prohibited.

Other effects of Title IX are that physical education classes must be open to enrollment for all students and, if a unit of instruction is *required* for one student, it must be required for all. Thus, many schools are offering coeducational physical education programs and are encouraging students to participate in activities that have previously been considered "only for boys" or "only for girls."

Athletic Programs

With regard to athletic programs, the intent of the Legislature is that opportunities for participation in interschool athletic programs in public high schools be provided on as equitable a basis as possible for male and female students (Education Code Section 49020 [10930]). Further, Education Code Section 49021 [10930.5] provides that females be given the same opportunity to participate in athletics and to compete with other females in individual and team sports as males are given. Under provisions of Education Code Section 49023 [10930.7], facilities and opportunities for participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, travel arrangements, locker rooms, and medical services.

Student body groups that support athletic activities should review their processes and procedures to determine whether they are in compliance with state and federal laws. Pep rallies, for example, should be provided for both boys' and girls' sports; boys' and girls' athletic programs should be covered equally in the school yearbook; and funds should be budgeted in relation to the numbers of students served.

VII Information Disclosure by Schools

The information presented in Section VII pertains to the provision of information to parents and guardians and the right of parents and guardians to access to their child's cumulative record.

Parental Information

At the beginning of the first semester or quarter of every school year, the governing board of each school district must forward to the parent or guardian of every student a notice containing district policies about the following:

1. Student absences for religious purposes (Education Code Section 46014 [1086])
2. Sex education courses (Education Code Section 51550 [8506])
3. Excusing of a student from health instruction, family life education, and sex education because of religious beliefs (Education Code Section 51240 [8701])
4. Cooperation in control of communicable disease and immunization of students (Education Code Section 49403 [11704])
5. Administration of prescribed medication for a student (Education Code Section 49423 [11753.1])
6. Refusal to consent to a physical examination of a student (Education Code Section 49451 [11822])
7. Vision appraisal and refusal for such on the grounds of religious beliefs (Education Code Section 49455 [11825])
8. Medical or hospital services for students (Education Code Section 49472 [11853])
9. Students' leaving the school grounds during the lunch period (Education Code Section 44808.5 [13557.7])

Districts must also send notices to parents or guardians about the following:

1. School improvement programs and school-site councils (Education Code Section 52011)
2. Alternative schools and programs (Education Code Section 58501 [5811.5])
3. The parent's or guardian's right to access to his or her child's records and the right to challenge those records (Education Code Section 49063 [10934])
4. The district's policy (if it has such a policy) on the administration of corporal punishment and the parent's or guardian's rights regarding the administration of corporal punishment to his or her child by school personnel (Education Code Sections 49001 [10855])
5. Grievance procedures related to alleged sex discrimination practices (Title 45, Code of Federal Regulations, sections 86.8 and 86.9)

Student Record File

In recent years a student's cumulative record has become the repository of a great deal of information concerning the student and his or her family. Thus, the educational records of individual students have become increasingly personal in nature. Student records commonly contain, in addition to scholastic data, the results of personality tests, psychological screenings, and evaluations by professional persons.

Because student records tend to be so personal in nature, the lawmakers of California have set down laws pertaining to such records (Education Code sections 49060–49078 [10931–10944]). These laws are basically designed to protect and

ensure the privacy of the individual student and to ensure compliance with the requirements of the federal Family Educational Rights and Privacy Act of 1974 (Title 20, USC, Section 1681(g)).

One very basic law concerning student records is that requiring notification of the parent or guardian of his or her right to access to his or her child's records. This notice is to be provided to the parent or guardian on the student's initial day of enrollment. The notice shall preferably be in the student's home language and shall be in a form that reasonably notifies the parent or guardian of the following or the *availability* of the following specific information (Education Code Section 49063 [10934]):

1. The types of records and information therein that are directly related to students and maintained by the school
2. The name and position of the official responsible for the maintenance of each type of record, the persons that have access to those records, and the purpose for which they have such access
3. The policies of the school for reviewing and expunging those records
4. The absolute right of the parent or guardian to access to student records
5. The procedures for challenging the content of student records[1]
6. The cost (if any) to the parent or guardian for reproducing copies of records
7. The categories of information that the institution has designated as directory information and the parties to whom such information will be released unless the parent or guardian objects

Rights of Parents or Guardians

The parents or guardians of currently enrolled or former students have an absolute right to access to any and all student records that are related to their children and that are maintained by school districts or private schools. The editing or withholding of any such records is prohibited. Access to these records shall be granted no later than five days following the request (Education Code Section 49069 [10940]).

Parents and guardians are also entitled to notification from their child's school district about many matters that affect or may affect their child. Medical issues, special education, and nondiscrimination are only a few of the areas about which districts must supply specified information to parents and guardians.

Transfer of Records

When a student transfers to another school district or private school (in California or another state), a copy of the student's records shall be transferred, upon request, from the other district or private school. The original or a copy must also be retained permanently by the sending district. Student records shall not be withheld from the requesting district because of any charges or fees owed by the student or his or her parent or guardian. This provision applies to students in kindergarten and grades one through twelve in both public and private schools (Section 438(c) of the California Administrative Code, Title 5, Education).

[1]Students who are sixteen years of age or older or who have completed grade ten have an absolute right to access to their student records. However, only students eighteen years of age or older may challenge the content of such records.

79-210 03-0793 300 10-80 5M

Other Publications Available from the Department of Education

Students' Rights and Responsibilities Handbook is one of approximately 450 publications that are available from the California State Department of Education. Some of the more recent publications or those most widely used are the following:

Accounting Procedures for Student Organizations (1979)	$ 1.50
An Assessment of the Writing Performance of California High School Seniors (1977)	2.75
Bicycle Rules of the Road in California (1977)	1.50
California Guide to Parent Participation in Driver Education (1978)	3.15
California Master Plan for Special Education (1974)	1.00†
California Private School Directory	5.00
California Public School Directory	11.00
California Public Schools Selected Statistics	1.00
California School Accounting Manual (1978)	1.65
California School Energy Concepts (1978)	.85
California School Lighting Design and Evaluation (1978)	.85
California Schools Beyond Serrano (1979)	.85
Child Care and Development Services: Report of the Commission to Formulate a State Plan (1978)	2.50
Computers for Learning (1977)	1.25
Directory of Private Postsecondary Institutions in California (1978)	1.50
Discussion Guide for the California School Improvement Program (1978)	1.50†*
District Master Plan for School Improvement (1979)	1.50*
English Language Framework for California Public Schools (1976)	1.50
Establishing School Site Councils: The California School Improvement Program (1977)	1.50†*
Evaluation Report of Consolidated Application Programs (1979)	2.25
Foreign Language Framework for California Public Schools (1980)	2.50
Genetic Conditions: A Resource Book and Instructional Guide (1977)	1.30
Guidance Services in Adult Education (1979)	2.25
Guide for Multicultural Education: Content and Context (1977)	1.25
Guide for Ongoing Planning (1977)	1.10
Guidelines and Procedures for Meeting the Specialized Physical Health Care Needs of Students (1980)	2.50
Handbook for Instruction on Aging (1978)	1.75
Handbook for Planning an Effective Reading Program (1979)	1.50*
Handbook for Reporting and Using Test Results (1976)	8.50
A Handbook Regarding the Privacy and Disclosure of Pupil Records (1978)	.85
Health Instruction Framework for California Public Schools (1978)	1.35
Improving the Human Environment of Schools (1979)	2.50
Liability Insurance in California Public Schools (1978)	2.00
Manual of First Aid Practices for School Bus Drivers (1980)	1.25
A New Era in Special Education: California's Master Plan in Action (1980)	2.00
Parents Can Be Partners (1978)	1.35†
Pedestrian Rules of the Road in California (1979)	1.50
Pedestrian Rules of the Road in California–Primary Edition (1980)	1.50
Physical Education for Children, Ages Four Through Nine (1978)	2.50
Planning for Multicultural Education as a Part of School Improvement (1979)	1.25*
Planning Handbook (1978)	1.50*
Publicizing Adult Education Programs (1978)	2.00
Putting It Together with Parents (1979)	.85†
Report of the Ad Hoc Committee on Integrated Educational Programs (1978)	2.60
Science Framework for California Public Schools (1978)	1.65
Site Management (1977)	1.50
Social Sciences Education Framework for California Public Schools (1975)	1.10
State Guidelines for School Athletic Programs (1978)	2.20
Student Achievement in California Schools (1979)	1.25
Students' Rights and Responsibilities Handbook (1980)	1.50†
Teaching About Sexually Transmitted Diseases (1980)	1.65
A Unified Approach to Occupational Education: Report of the Commission on Vocational Education (1979)	2.00

†Also available in Spanish, at the price indicated.
*Developed for implementation of AB 65.

Orders should be directed to:

California State Department of Education
P.O. Box 271
Sacramento, CA 95802

Remittance or purchase order must accompany order. Purchase orders without checks are accepted only from government agencies in California. Sales tax should be added to all orders from California purchasers.

A complete list of publications available from the Department may be obtained by writing to the address listed above.